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TO: William Caton (original and four copies)
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cc: Janice Myles (twelve copies)
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ON BEHALF OF: DirecTV Broadband, Inc.

DATE: February 6, 2002

RE: CC Docket # 02-7

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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U.S. DEPARTMENT OF COMMERCE
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of)

Application by Verizon New England, Inc.)
Bell Atlantic Communications, Inc. (d/b/a)
Verizon Long Distance), NYNEX Long Distance)
Company (d/b/a Verizon Enterprise Solutions),)
Verizon Global Networks, Inc., and)
Verizon Select Services, Inc., for Authorization)
To Provide In-Region, InterLATA Services)
In the State of Vermont)

CC Docket No. 02-7/

COMMENTS OF DIRECTV BROADBAND, INC.

DIRECTV Broadband, Inc. ("DIRECTV Broadband") submits these comments concerning the above-captioned Application of Verizon New England, Inc., *et al* ("Verizon") for authorization to provide In-Region, InterLATA Services in Vermont. DIRECTV Broadband is a broadband services provider ("BSP") that offers retail high-speed DSL-based broadband services such as Internet access, e-mail, web-hosting, multiple computer networking services, virus and security services, and, in the future, other interactive and consumer-focused broadband services and applications (collectively, "Broadband Services"). DIRECTV Broadband provides these services to almost 100,000 residential customers nationwide in 146 Metropolitan Areas (MSAs) and is one of the largest non-ILEC affiliated broadband providers in the country. DIRECTV Broadband provides service by means of its own nationwide broadband network combined with last-mile wholesale xDSL connectivity and transport (together, "DSL Connectivity") purchased from ILECs, and, where possible, from CLECs. DIRECTV Broadband purchases DSL Connectivity from MCI WorldCom, Verizon (including the former GTE) and other ILECs including BellSouth, SBC and its affiliates (Ameritech, Pacific Bell, Southern New England Telephone, and SWBT), and Qwest. For the reasons stated below, the Commission should not

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grant the Application unless (1) Verizon commits to provide DSL Connectivity, including interLATA ATM transport services, to BSPs on reasonable terms and conditions, and (2) discloses on the record its plans for any changes to current DSL Connectivity offerings and demonstrates that these will not adversely affect the provisioning of service by BSPs to consumers.

I. BOCs Impose Inefficient DSL Connectivity Service Arrangements that Harm Consumers

As noted, DIRECTV Broadband serves residential subscribers across the nation by purchasing wholesale digital subscriber line (“DSL”) Connectivity from ILECs, and where available, from CLECs. Typically, DSL Connectivity will extend from the customer’s home to the ILEC wire center serving the residence (the “Last Mile”) and from there the data traffic is delivered to the ILEC’s ATM network. An “Egress Circuit” purchased by DIRECTV Broadband (or another BSP) then carries the customer’s data traffic out of the ILEC’s ATM network and into the DIRECTV Broadband nationwide network. DIRECTV Broadband must establish a separate and often expensive Egress Circuit in each LATA, regardless of the number of customers in that LATA. DIRECTV Broadband then carries data to the Internet or private networks as each Broadband Service requires.

While these arrangements enable DIRECTV Broadband to provide quality, innovative Broadband Services to consumers, these arrangements as currently provisioned impose a number of very significant costs and inefficiencies on BSPs. The Egress Circuits are expensive DS3 and OC3 links, typically costing between \$5,000 and \$15,000 per month per circuit. The requirement that at least one circuit connect the BSP to each LATA¹ imposes significant fixed

¹ The Commission should note that Verizon has refused to allow BSPs to share egress circuits, denying them the opportunity to more efficiently utilize these circuits. It should also be noted that ILEC-affiliated BSPs, since they essentially pay half the cost of the Egress Circuit to themselves, are not negatively impacted by the multiple Egress Circuit requirement to the same extent as independent BSPs.

cost that cannot vary with the number of customers served in the LATA. Unless a BSP serves thousands of customers in a particular LATA, the fixed cost is far in excess of what would be involved if BSPs were able to obtain efficiently sized Egress Circuits, including single Egress Circuits that serve customers in contiguous LATAs in states or regions where an ILEC has obtained Section 271 authority.²

In addition, BOCs are unnecessarily limiting the number of customers that can be served on the Egress Circuits that extend from each central office to DIRECTV Broadband's interconnection point in each LATA. In some cases, this limit is far below the technical limits of the Egress Circuit. For example, Verizon West permits only 2,000 customers to be served on a DS3 Egress Circuit even though it could readily be used to serve at least 4,000 customers. This artificial limit on the number of subscribers that can be served on an Egress Circuit substantially increases the absolute and per subscriber cost for these circuits.

The combined result of these provisioning arrangements is to unduly complicate the economics of providing Broadband Services to consumers. Particularly in less densely populated areas, the inefficiencies can make it uneconomical to provide service.

It would be far more efficient and make service more widely available to consumers, especially in areas outside metropolitan centers if, instead of being required by each BOC to extend facilities into each LATA, DIRECTV Broadband could obtain regionwide or at least multi-state, ATM transport services³ without artificial constraints on the number of subscribers

² Prior to obtaining long distance authority, a BOC cannot carry traffic in its ATM network across a LATA boundary. The BOCs rely on this prohibition to require BSPs to purchase a separate egress circuit into each LATA where the BSP will serve a customer. However, the prohibition does not support the Verizon position that BSPs cannot work cooperatively to utilize the same Egress Circuit. This prohibition might, objectively, be seen as a method of making it more expensive for BSPs that compete with Verizon Online to do business, and preventing the most obvious method by which competing BSPs can reach economies of scale in a given area. Without question, more communities outside metropolitan areas would receive Broadband Service from BSPs, absent this prohibition.

³ There has been some indication that Pacific Bell will propose to offer egress transport statewide to BSPs in California at a cost of \$7.00 per subscriber per month, and likewise other ILECs are suggesting that a region-wide Egress model may be adopted. No details are available from SBC. However, the Commission should note that while

the Egress Circuit supports. ATM networks were developed precisely because they allow aggregation of data traffic, and combine the efficiencies of packet-switching with the ability to use Last Mile circuit switched network facilities. In fact, these efficiencies are such that DIRECTV Broadband estimates – in light of the cost savings the ILECs will enjoy after obtaining Section 271 authority – that any additional cost for carrying ATM traffic across LATA boundaries to a single region-wide Egress point should not result in significant additional charges to BSPs. The ILECs' savings associated with long-distance authority⁴ are such that they more than offset the cost of carrying traffic to a single Egress point in the state or region where the ILEC has been granted long distance authority.

II. Grant of the Application Would Not Serve the Public Interest Absent Commitments to Provide Region-Wide ATM Transport On An Efficient Basis

In order to grant the Application, the Commission must determine that the proposed interLATA entry “is consistent with the public interest, convenience and necessity.”⁵ A key purpose of Section 271 is to bring to consumers the increased service choices and lower prices that competition should offer. Verizon broadly asserts that the public interest would be served by grant of its application.⁶

However, DIRECTV Broadband has been disappointed that without exception the BOCs, after obtaining interLATA approval, have not met the challenge and opportunity envisioned in

this proposal would eliminate the need for a BSP to pull single Egress Circuits into each LATA, the proposed price is over five times the cost of purchasing single Egress Circuits under full utilization. This is despite the enormous cost savings within its ATM network from which Pacific Bell will benefit if it obtains long distance authority. SBC appears ready to offer a new egress model that will perpetuate, rather than solve the problem of establishing an economically rational model that will allow more communities to receive Broadband Services from BSPs that compete for their business, at reasonable prices. The Commission should take a hard look at the pricing proposed for any such solution.

⁴ An ILEC that receives long distance authority is relieved of the requirement that the ILEC purchase expensive data circuits from interexchange carriers, formerly necessary to carry ILEC ATM traffic across LATA boundaries. None of the savings has been passed along to consumers of ILEC services in either Texas or New York, where Verizon and SBC were relieved of these costs over a year ago.

⁵ 47 USC Section 271(d)(3)(C).

⁶ Application. at pp. 74 – 99.

Section 271 in that they have failed to extend their existing ATM transport services in ways that could permit DIRECTV Broadband other BSPs to take full advantage of the efficiencies of this technology that should become available after ILEC entry into long distance, and serve more widely dispersed communities more cost effectively

For example, since receiving long distance authority in New York, Verizon has not dropped its requirement that each BSP purchase multiple inefficiently sized circuits across the state. Likewise, SBC has not extended its ATM networks and transport offerings and has failed to provide to DIRECTV Broadband this service on an interLATA basis in Texas, where DIRECTV Broadband continues to purchase multiple Egress Circuits serving separate LATAs. In both Texas and New York, had the onerous economics of purchasing multiple Egress Circuits statewide been removed and replaced with regionwide interLATA ATM transport, then DIRECTV Broadband and other BSPs would already be serving far more communities and consumers.

One of the most sensible and practical measures in eliminating the “digital divide,” then, is to require efficient region-wide transport as a necessary component of granting long distance authority under Section 271. Having failed to eliminate the multiple Egress Circuit requirement on their own a year after receiving long distance authority in key states, the ILECs cannot reasonably be expected to do so in regions where 271 applications are pending. With respect to the immediate issue in Vermont, DIRECTV Broadband respectfully requests that the Commission determine that, apart from other possible deficiencies in Verizon’s application, that it would not be in the public interest to grant long distance authority absent, first, the actual deployment of a rational efficiently priced model for statewide egress in New York where Verizon’s long distance authority has been in place for over a year, and second a commitment

from Verizon that it will offer efficient interLATA ATM transport services to BSPs on reasonable terms and conditions within a short time in Vermont after obtaining the grant.

III. Verizon Has Not Provided Adequate Assurance that it Will Not Degrade DSL Connectivity Such That New Innovative Broadband Services Will Be Eliminated

The continued broadband capability of DSL Connectivity represents a bedrock element for deployment of innovative Broadband Services to America's homes, businesses and schools. Stability of the DSL platform is the foundation upon which innovation rests, and several ILECs including Verizon have threatened to degrade DSL Connectivity so that it no longer will be capable of supporting important new services.

Verizon has threatened to eliminate the always-on component of DSL Connectivity and impose a new session-based communications protocol that will log-off subscribers at ILEC determined intervals. This would eliminate a host of Broadband Services that will benefit American consumers – some of which would provide competition to the ILECs' voice services. Despite the BSPs' requests for assurances that any new protocol that may be imposed will not, among other things, eliminate the current always-on nature of DSL Connectivity, Verizon has refused to provide any such assurance.⁷ In the present 271 application, Verizon provides the FCC no meaningful information concerning its current or future plans for providing DSL Connectivity or changes that will degrade the DSL Connectivity provided to over a million American consumers.⁸

Accordingly, DIRECTV Broadband requests that the Commission obtain more information and commitments from Verizon regarding any proposal it may have to degrade the

⁷ Discussions are ongoing with other ILECs. Notably the same issue is raised in SBC's proposed BCG requirement and SBC has likewise refused to state that BCG will not degrade the existing capability of DSL.

⁸ Despite the fundamental nature of the changes, DIRECTV Broadband is not aware that the changes have been identified in any proposed tariff revision. This, among other things, highlights the danger of allowing the ILECs to file tariff revisions to DSL connectivity on one day's notice without comment from consumer groups or other parties that would be impacted by a proposed change.

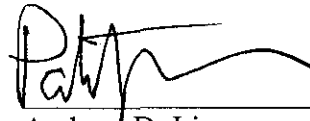
capability of wholesale DSL Connectivity to support advanced Broadband Services. Specifically, as part of its public interest inquiry in this proceeding, the Commission should require Verizon to identify on the record any changes under consideration to the communications protocol fundamental to DSL Connectivity, to eliminate the “always-on” nature of DSL, or to deploy services that might interfere with Broadband Services provided by BSPs over their existing Broadband connections. If fundamental changes to DSL Connectivity are proposed, it is critical that the FCC require Verizon to demonstrate that these changes will not adversely affect or inhibit the continued deployment of Broadband Services to consumers.

IV. Conclusion

For these reasons, the Commission should not grant the Application absent commitments from Verizon to provide efficient DSL Connectivity including interLATA ATM services to BSPs on reasonable terms and conditions. The Commission should also obtain on the record complete information from Verizon concerning any planned changes to DSL Connectivity delivered to BSPs.

Respectfully Submitted,

DIRECTV BROADBAND, INC.

A handwritten signature in black ink, appearing to read 'Pat', is written over a horizontal line.

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Date: February 6, 2002

CERTIFICATE OF SERVICE

I, Anita Goff, hereby certify that on this 6th day of February 2002, copies of the foregoing Comments of DIRECTV Broadband, Inc. were delivered by hand* or first-class mail to the following parties:

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